



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

CRS  
Docket No: 2395-00  
5 February 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 January 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 27 July 1966 at age 17. At that time, you had completed ten years of formal education. You then served without disciplinary incident until 20 April 1967, when you were convicted by a special court-martial of two periods of unauthorized absence totalling 41 days and breaking restriction. The court sentenced you to confinement at hard labor for six months and forfeitures of \$160 for six months. However, the convening authority suspended portions of the confinement and forfeitures.

A second special court-martial convened on 18 September 1968 and found you guilty of an unauthorized absence of 255 days, from 22 November 1967 to 7 August 1968. The court sentenced you to confinement at hard labor for twelve months, forfeitures of \$97 per month for six months, reduction to pay grade E-1, and a bad conduct discharge. On 12 November 1968, in special court-martial order #17-69, the convening authority reduced the forfeitures, but otherwise approved the findings and sentence. However, on 19

December 1968, a successor convening authority purported to suspend all of the sentence except the reduction in rank. Subsequently, the findings and sentence were affirmed upon appellate review, which was completed on 11 April 1969.

Subsequently, you were convicted by a third special court-martial on 8 September 1969 of an unauthorized absence of 124 days, from 24 February to 28 June 1969. The court sentenced you to confinement at hard labor for six months and forfeitures of \$109 for six months.

A DD Form 214 in the record indicates that you were discharged on 13 November 1969. The authority for such action is set forth as the applicable portion of the Marine Corps Separation and Retirement Manual and "Supplementary Special Court-Martial Order Number 17-69". There is no such supplementary order in the record. However, Supplementary Special Court-Martial Order #134-69, dated 17 November 1969, orders the execution of the bad conduct discharge.

The record contains a letter of 9 December 1969 from the Director of the Judge Advocate Division, Headquarters Marine Corps, to Senator Jacob Javits. In that letter, the Director states that due to the special court-martial conviction of 8 September 1969, "On 17 November 1969, ... the suspension of his bad conduct discharge was vacated, and on 19 November 1969, he was discharged ... with a bad conduct discharge". A memorandum for the record contained in the service record also states that the date of discharge was 19 November 1969.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and limited education. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge. In this regard, the Board noted that during your enlistment, which lasted about 40 months, you were an unauthorized absentee for about 14 months and were confined for about 8 months. Thus, more than half of your enlistment was lost time. The Board also noted that the sentence to a bad conduct discharge apparently was suspended, thus giving you an opportunity to earn a better discharge. However, you were convicted of another lengthy period of unauthorized absence, which resulted in the discharge being executed. Based on the foregoing, the Board concluded that no change to the discharge is warranted based on clemency considerations. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director